



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18407276

Date: SEP. 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. In the decision, the Director did not address whether the Petitioner satisfied the threshold criteria for EB-2 classification before conducting an analysis of the factors in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). However, in a request for evidence (RFE), the Director concluded that the Petitioner qualified for classification as a member of the professions holding an advanced degree. Specifically, the Director stated, “[e]vidence received with the initial filing included a copy of a diploma from [REDACTED] University, demonstrating that the [P]etitioner received a master’s on December 18, 2018. Therefore, it has been established that the [P]etitioner qualifies for the E21 classification with an advanced degree.” For the reasons discussed below, we withdraw that conclusion.

In relevant part, the record contains a copy of a “diploma” for the “qualification of engineer specializing in ‘food technology’” awarded to the Petitioner in 2013 by the [REDACTED] [REDACTED] University, and an accompanying English translation. The English translation of a “supplement to the diploma” indicates that the “standard term of a full time [*sic*] education [for the] direction/specialty [in] food technology [is] 4 years.” Although the Petitioner asserted that he “graduated from the [REDACTED] University, [REDACTED] Russia[,] with a [m]aster’s degree in [f]ood [t]echnology,” neither the copy of the diploma nor its supplement, as translated in the record, indicates that the four-year diploma is equivalent to an advanced U.S. degree, in order for the Petitioner to qualify as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) (defining “advanced degree” for the purposes of a Form I-140, Immigrant Petition for Alien Worker, as “any United States academic or professional degree or a foreign *equivalent* degree above that of a baccalaureate” (emphasis added)). The Petitioner’s own letter is not “a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-

documented case for such an equivalency determination.” See 6 USCIS Policy Manual E.9, <https://www.uscis.gov/policy-manual>. The opinion letter also is not, in the alternative, “a comparable evaluation performed by a school official who has the authority to make such determinations and is acting in his or her official capacity with the educational institution.”¹ See *id.*

Additionally, the academic history section of the U.S. Department of Labor Form ETA 750 Part B, submitted in support of the Form I-140, Immigrant Petition for Alien Worker, indicates he received a certificate in 2009 from the [REDACTED] School of Public Catering and a diploma in 2013, after four years of study, from the [REDACTED] University. The record does not establish that the Petitioner was awarded the equivalent of a U.S. bachelor’s degree prior to his receipt of the 2013 diploma in food technology; moreover, the record does not establish that the Petitioner received any degree in 2018. In summation, the record does not support the Director’s conclusion that “the [P]etitioner received a master’s on December 18, 2018,” as asserted in the RFE.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as a member of the professions holding an advanced degree. See section 203(b)(2) of the Act.²

Accordingly, the matter will be remanded to the Director to conduct a final merits determination of the advanced degree issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.

¹ In any event, “[a]ny educational equivalency evaluation performed by a credentials evaluator or school official is solely advisory in nature; the final determination continues to rest with the [adjudicating USCIS] officer.” See 6 USCIS Policy Manual E.9, <https://www.uscis.gov/policy-manual>.

² We further note that the record—both at the time of filing and at the time of the Director’s decision—does not contain sufficient information regarding the proposed endeavor the Petitioner would pursue in the United States to meaningfully analyze whether any of the *Dhanasar* prongs have been satisfied. See *Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016); see also 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to “establish that he or she is eligible for the requested benefit at the time of filing the benefit request and . . . continue to be eligible through adjudication”).